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U.S. Citizenship
and Immigration
Services

MI

JUL 06 2004

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant stated that he had submitted sufficient documentation to establish his physical presence and residence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now CIS, on June 30, 2003.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On July 21, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States.

The director's decision indicated that the applicant had failed to respond to the request for additional evidence; therefore, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 18, 2003.

The record, however, indicates that the applicant did respond timely to the director's request for additional evidence. The materials sent in response to the request are date-stamped August 18, 2003. In this response, the applicant provided documentation relating to his residence and physical presence in the United States. In addition, the applicant's statement indicated that he did not apply for TPS in the past because he "was always told that this could be [a] scam to have all of us residents from Honduras deported back to our country." The applicant stated he wanted to apply when he saw that the program worked, and that unspecified persons had told him that new applicants could apply if they had enough evidence of physical presence in the United States prior to January 1999.

On appeal, the applicant resubmitted documentation previously included in the record and stated that this evidence was sufficient to establish his eligibility.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant's statement that he feared being deported if he applied does not meet the regulatory requirements to establish that he is eligible for late registration. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed, and the application must be denied.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on July 21, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A written statement dated August 14, 2003;

2. A photocopy of a Missouri Driver License, expiration 10/7/2007;
3. Photocopies of Missouri Non-Driver Licenses, expiration 6/25/2000;
4. A photocopy of Biographic page of a Honduras Passport;
5. Four (4) sworn affidavits attesting to the applicant's rental history and residence;
6. A letter from [REDACTED] stating that the applicant has been a full-time year-round employee since April 30, 2000;
7. A letter from Signature Landscape, Olathe, Kansas, indicating that the applicant worked there from March 1996 to December 1998, and again from November 1999 to April 2000;
8. Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, from the above employers for the years 1997 through 2002; and,
9. A photocopy of a birth certificate naming the applicant as the father of a child born on September 29, 2000.

The director's decision indicated that the applicant had failed to respond to the request for additional evidence, and, therefore, the director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods.

On appeal, the applicant resubmitted the above materials.

It is noted that the IRS Form W-2 for 1999 indicates that the applicant earned \$1041.75 for that year. By contrast, the IRS Forms W-2 for the other years indicated totals ranging from \$19,516 to over \$28,500. The letter from Signature Landscape, Olathe, Kansas, indicated that the applicant worked with that company from March 1996 to December 1998, and again from November 1999 to April 2000. The applicant has not provided evidence relating to his physical presence and residence in the United States for the period of January 1999 through November 1999. The sworn affidavit from [REDACTED] attesting that the applicant rented a particular apartment from November 1998 to November 1999, is not acceptable evidence pursuant to the regulations at 8 C.F.R. § 244.9. The applicant has not offered an explanation for this 11-month gap in the evidence he presented.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from January 1999 to November 1999. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.